

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FELIX ALVAREZ,)	CASE NO. 4:11CV3170
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
LISA HOLLINGSWORTH,)	
)	
Respondent.)	

This matter is before the court on Petitioner Felix Alvarez's ("Alvarez") Notice of Appeal. (Filing No. [8](#).) For the reasons set forth below, the court finds that Alvarez's Notice of Appeal is untimely.

[Federal Rule of Appellate Procedure 4\(a\)\(1\)](#) requires that the notice of appeal in a civil case be filed within thirty days after the judgment or order appealed from is entered. "A timely notice of appeal is mandatory and jurisdictional." [Burgs v. Johnson County, Iowa, 79 F.3d 701, 702 \(8th Cir. 1996\)](#). In addition, the prison mailbox rule provides:

If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

[Fed. R. App. P. 4\(c\)\(1\)](#).

The court dismissed Alvarez's Petition for Writ of Habeas Corpus without prejudice on December 7, 2011. (Filing No. [7](#).) Alvarez filed a Notice of Appeal on January 12, 2012, 36 days after the court entered judgment in this matter. (Filing No. [8](#).) Further, it appears that Alvarez deposited the notice in the institution's internal mail system on

January 9, 2012, 33 days after the court entered judgment. (Id. at CM/ECF p. 5.) Accordingly, Petitioner's Notice of Appeal is untimely. However, on the court's own motion, Petitioner shall have until February 20, 2012, to file an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Petitioner fails to submit such an affidavit, Petitioner's appeal will not be processed.

IT IS THEREFORE ORDERED that:

1. Petitioner shall have until **February 20, 2012**, to submit an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Petitioner fails to submit such an affidavit by February 20, 2012, Petitioner's appeal will not be processed; and
2. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for affidavit on February 20, 2012.

DATED this 19th day of January, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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